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Supreme Court, U.S.
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No. 01-1180

IN THE SUPREME COURT OF THE UNITED STATES

THE STATE OF FLORIDA,

Petitioner,

v.

GLORIA PULLEN,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

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FLORIDA'S REPLY TO PULLEN'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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9 pp

QUESTION PRESENTED

When appointed counsel concludes there is no merit to an indigent's appeal from temporary commitment for treatment of mental illness, does due process require the procedure in Anders v. California, 386 U.S. 738 (1967), be wholly followed?

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FLORIDA'S REPLY TO PULLEN'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The decision under review is now reported as Pullen v. State, 802 So.2d 1113 (Fla. 2001).

REASONS FOR GRANTING THE WRIT

I. Whether Due Process Requires the Procedure in Anders v. California, 386 U.S. 738 (1967), Be Wholly Followed in "No-merit" Appeals from Temporary Commitment for Mental Illness Is an Important Question of Federal Law this Court Should Settle, Thereby Resolving Conflict among the Courts of Several States.

Pullen advances two reasons for this Court to deny certiorari. First and foremost, she contends the decision below was grounded on "policy," to which this Court must defer based on considerations of federalism. Second, she tersely urges the jurisdictional basis for review by the Florida Supreme Court provides independent state law grounds for the majority opinion.

Before the Florida Supreme Court, Pullen argued that due process required a "full" Anders-type process--including independent appellate court review of the record--be required in no-merit appeals from temporary civil commitment orders.[1] While

[1]Pullen made the same argument before the intermediate appellate court, the First District Court of Appeal. That court disagreed, holding that because the right to counsel in civil commitment arises from the Due Process Clause, Anders was not implicated. *See* In re Interest of Pullen v. State of Florida, 764 So. 2d 704, 705 (Fla. 1st DCA 2000) (Pet. App. C., p.2).

occasionally bolstering her position by invoking "public policy," Pullen always presented the issue as one of procedural fairness in light of the liberty interest at stake.

It was in this context that a bare majority of the Florida Supreme Court reversed the First District Court of Appeal outright. Without mentioning the Florida Constitution, the majority reasoned:

> The process to which an individual is entitled depends on the extent to which [the] individual will be condemned to suffer grievous loss. The question is not merely the weight of the individual's interest, but whether the nature of the interest is one within the contemplation of the liberty or property language of the Fourteenth Amendment. [e.s.; internal quote, and cite omitted].

Pullen, 802 So.2d at 1116 (Pet. App. B, p.5).[2] Later, and immediately before the "policies and interests" language relied upon by Pullen, the majority also said:

> While the right to appointed counsel in Baker Act involuntary civil commitment proceedings is provided by Florida statute, the constitutional guarantee of due process would require no less. [e.s.; internal quote and cite omitted].

Id. at 1119 (Pet. App. B, p.9-10).

Read together, the quoted passages show the majority's concern for policy is inseparable from its perception of the due process demands of the Fourteenth Amendment. The only fair

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[2]Citation to documents appended to Florida's petition for certiorari will be in the form (Pet. App. __, p.__).

reading of the majority opinion is that it holds the Due Process Clause of the Fourteenth Amendment requires Anders be followed in total. For Pullen to argue otherwise flies in the face of the majority's rationale, the history of the case, and her own position before the Florida Supreme court and the First District Court of Appeal.

The majority did not mention Mathews v. Eldridge, 424 U.S. 319 (1976), much less apply its three-part test; a failure noted by the dissent. *See* Pullen, 803 So.2d at 1121 ("Considering the three-factor test of Mathews v. Eldridge, 424 U.S. 319, 335 (1976), I would find no due process deprivation." [footnote omitted]) (Pariente, J., concurring and dissenting in part; in which Wells, C.J., and Quince, J., concur). The majority's failure to apply Mathews would not have been noted had the decision below actually turned on something other than due process. Such failure shows the majority misapprehended the requisites of the Due Process Clause, and that review by this Court is warranted.

Thus, in the face of the majority's actual words, Pullen asserts that the "Florida Supreme Court made a policy decision[.]" [e.s.] (Pullen resp., p.2). This contention ignores the majority's express reliance on "due process," as discussed above. [3] The only ground for the majority's holding is the Due Process Clause of the Fourteenth Amendment. That holding is not a statement of policy, but an incorrect ruling on a federal question this Court should address.

Pullen also urges the majority decision rests on independent state grounds, simply because the Florida Supreme Court's jurisdictional basis for review was the effect of the intermediate appellate decision on a class of state or constitutional officers.

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[3]Pullen belittles Florida's reliance on the "novelty" of the federal question presented by the decision below. (Pullen resp., p.6). The novelty arises from the fact the question--applicability of Anders to civil commitment--is one of first impression, not that it is unique to Florida.

(Pullen resp., p.7 & n.2). The jurisdictional basis for review by the Florida Supreme Court has nothing to do with the substance of the majority's decision, which required--as a matter of due process--such officers to apply Anders to appeals from civil commitment based on mental health.

II. The Florida Supreme Court's Decision Conflicts with Smith v. Robbins, 528 U.S. 259 (2000) and Mathews v. Eldridge, 424 U.S. 319 (1976).

Florida relies on the assertion of conflict set forth in its petition. The majority found the procedure adopted by the First District Court of Appeal to be insufficient under the Due Process Clause; and, in conflict with Smith v. Robbins, required Anders be followed in total. Instead of applying Mathews, the majority relied on some undescribed rationale of its own, necessarily creating conflict with that decision.

CONCLUSION

Pullen's opposition to certiorari simply ignores the federal question presented by the decision below. Based on Florida's argument in its petition and this reply, the Court should grant certiorari to review the decision of the Florida Supreme Court.

Respectfully submitted,

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Case No. 01-1180 (3)

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2001

STATE OF FLORIDA, Petitioner

vs.

GLORIA PULLEN, Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

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OPINION BELOW

The Florida Supreme Court's opinion in this case, Pullen v. State, 802 So. 2d 1113 (Fla. 2001), is reproduced as Appendix A.

JURISDICTION

Petitioner seeks this Court's Certiorari jurisdiction pursuant to 28 U.S.C. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner relies on the United States Constitution, Amendment XIV.

Respondent relies on Article I, §9, Florida Constitution:

> Section 9. Due Process. — No person shall be deprived of life, liberty or property without due process of law ... .

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's recitation of the procedural history of this case.

REASONS FOR NOT GRANTING THE WRIT

ISSUE I

PRINCIPLES OF FEDERALISM ALLOW THE SEVERAL STATES TO DETERMINE WHAT PROCEDURES ARE REQUIRED IN ORDER TO ENSURE DUE PROCESS IN REVIEWING THE APPEAL FROM AN ORDER OF INVOLUNTARY COMMITMENT.

The Florida Supreme Court made a policy decision that requires a procedure for the intermediate appellate courts of Florida to follow when reviewing on direct appeal an order of involuntary commitment. Specifically, that court held that the appellate court must treat an appeal in which a no-merit brief is filed in accord with Anders v. California, 386 U.S. 738 (1967). The Florida Supreme Court's decision is based on principles of federalism and state policy. The State of Florida has provided no compelling reason for this Court to exercise its discretionary jurisdiction.

The state has cited cases in which the intermediate appellate courts of Florida, and various courts of other states, have addressed the question of whether the Anders procedure applies to other types of civil appeals. Petition at 5-7. What the state fails to recognize is that the states are free

under Anders to develop their own methods of review, and this Court should have no role in the matter.

In State v. Causey, 503 So. 2d 321 (Fla. 1987), the Florida Supreme Court was faced with the question of what procedures were appropriate when the intermediate appellate court discovered a reversible error in an Anders brief in a criminal appeal. That court determined, as a matter of a state policy of fairness, that the appellate court was required to request supplemental briefs from both the indigent appellant and the state prior to ruling on the merits of the appeal:

> In the case, sub judice, the First District Court of Appeal reversed Causey's conviction without allowing either party to brief the issue. Both parties agree, as do we, that this was error. Except in extreme or extraordinary circumstances, the district court should request that briefs be submitted on the issues raised by the court before the court renders its opinion. This would present both sides with the fair opportunity to be heard.

503 So. 2d at 323. There is nothing in Anders which requires the appellate court to give the state an opportunity to address potential reversible error. Yet, the Florida Supreme Court determined as a matter of state policy that

fairness required that procedure.[1] That court made a similar policy decision in the instant case.

In Smith v. Robbins, 528 U.S. 259, 272 (2000), this Court held that the states are free to establish procedures to process an indigent's direct criminal appeal as a matter of right, when counsel files a no-merit brief. This Court has an "established practice of permitting the States, within the broad bounds of the Constitution, to experiment with solutions to difficult questions of policy." Smith v. Robbins, 528 U.S. at 272.

In Smith v. Robbins, this Court announced a "hands-off" policy with regard to how the states conduct their business: "[I]t is more in keeping with our status as a court, and particularly with our status as a court in the federal system, to avoid imposing a single solution on the States from the top down." Smith v. Robbins, 528 U.S. at 275.

In Pennsylvania v. Finley, 481 U.S. 551, 555 (1987), this Court stated that the Anders procedure is not "an independent constitutional command," but rather only a "prophylactic framework." In Griffin v. Illinois, 351 U.S. 12 (1956), this Court expressly disclaimed any rule-making authority over the states in their treatment of indigent appeals.

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[1]Surely the state would not want to give up its opportunity to be heard in *Anders* appeals because there is no federal right to be heard.

In Martinez v. Court of Appeal of California, 528 U.S. 152, 163 (2000), this Court held that the principles of federalism allow the states to develop their own rules to permit an appellant in a criminal case to represent himself on appeal in state court. Likewise, in Addington v. Texas, 441 U.S. 418, 431-32 (1979), this Court held that the principles of federalism allow the states to develop their own burden of proof for the standard of civil commitment:

> That some states have chosen--either legislatively or judicially--to adopt the criminal law standard gives no assurance that the more stringent standard of proof is needed or is even adaptable to the needs of all states. The essence of federalism is that states must be free to develop a variety of solutions to problems and not be forced into a common, uniform mold. As the substantive standards for civil commitment may vary from state to state, procedures must be allowed to vary so long as they meet the constitutional minimum. (emphasis added; footnote 5 omitted).

Here, the Florida Supreme Court has developed its own solution to the problem of how to review no-merit indigent civil commitment appeals, and this Court must permit it and the other states to do so, because such a procedure does not offend the federal constitution.

One intermediate appellate court judge in Florida has recognized that Florida has required greater protections for the appellant in an indigent criminal appeal than other states. Warner, Martha C., *Anders in the Fifty States: Some Appellants' Equal Protection is More Equal than Others'*, 23 FLA. ST. U. L. REV. 625 (1996). But that does not offend the federal constitution. The states are free under the principles of federalism to adopt their own procedures. Every state has a due process clause in its state constitution, and the fact that Florida has chosen a certain procedure under Article I, §9, Florida Constitution, to handle its indigent criminal or civil appeals is of no concern to this Court.

The state has invited this Court to accept review of this case "[b]ecause of its novelty and widespread implications." Petition at 7. It is hard to understand how a novel issue could have a widespread effect on other issues among other states. If this issue is so novel, this Court has no business reviewing it under the principles of federalism discussed above. Time will tell whether a federal constitutional controversy warranting this Court's attention develops. Until then, certiorari review at this point is premature.